

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JAMETRIUS MCCON,

PLAINTIFF

VERSUS

CASE 1:17cv77-LG-RHW

ADOLFO PEREZ; D&D EXPRESS TRANSPORT

DEFENDANTS AND

D&D EXPRESS TRANSPORT CORP

THIRD PARTY PLAINTIFF

VERSUS

DARYL D. WILLIAMS

THIRD PARTY DEFENDANT

PLAINTIFF JAMETRIUS MCCON'S FIRST MOTION IN LIMINE

The Plaintiff Jametrius McCon hereby requests that this Honorable Court grant this First Motion in Limine, based on the following:

1. Defendant D&D Express and Adolfo Perez have failed to preserve probative and material evidence in this case—the driver logbooks of Perez, and the “black box” or Electronic Control Module (“ECM”) data of the tractor driven by Perez, showing the speed and braking of the tractor for 59 seconds leading up to the wreck at issue.
2. Even Defendants agree that this evidence is important information in determining issues in this case. Defendants’ independent adjuster and investigator, David Wilton, admitted this in his deposition. Defendant Perez admitted that driver logbooks are the best evidence to show whether a driver is driving over the allowed hours, potentially causing him to be impaired. According to Plaintiff’s accident reconstruction Expert, Gary Johnson, the tractor’s ECM would have shown 59 seconds of speeds and braking, which is crucial evidence in this case.

3. Based on Mississippi law as stated in the recent case *Renner v. Retzer Resources, Inc.*, 236 So.3d 810, 816 (Miss.2017), if a Defendant negligently or wantonly allows material evidence to be destroyed, a jury instruction on the issue of spoliation should be given by the Court.

4. Plaintiff McCon requests that this Court allow evidence of spoliation to be presented to the jury and also requests that this Court consider the appropriate jury instruction at the conclusion of this case.

5. In support of this motion, Plaintiff submits a memorandum, and the following exhibits:

- A. 49 CFR § 395.8(k) regarding Driver Logbooks**
- B. Deposition excerpts of Defendant Adolfo Perez**
- C. Deposition excerpts of D&D Express Employee Carlos Laguna**
- D. Deposition excerpts of D&D Express independent adjuster and investigator David Wilton**
- E. D&D's First Supplemental Responses to the Requests for Production Propounded by Plaintiff McCon dated September 29, 2017**
- F. Deposition excerpts of D&D Express (Isumi Duran)**
- G. Deposition excerpts of Trooper Joshua LaCap**
- H. Report of Plaintiff's Expert Gary Johnson**
- I. Attorney Ed Rowan's Letter requesting preservation of evidence**
- J. Defendants' Expert Report of Shannon Burgess**

K. David Wilton Email regarding preservation of evidence

Respectfully submitted, this the 17th day of April, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notifications of such filing to the attorneys who have appeared in this case.

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